

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**JACKLYN J HAVERLY**

Claimant

**WINNEBAGO INDUSTRIES**

Employer

**APPEAL NO: 13A-UI-08302-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/09/13**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated July 5, 2013, reference 01, that held she was discharged for misconduct on June 13, 2013, and benefits are denied. A telephone hearing was held on August 20, 2013. The claimant participated. Gary McCarthy, Personnel Manager, and Steve Everson, Director of Service, participated for the employer.

**ISSUE:**

Whether claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on March 4, 1986, and last worked for the employer as a full-time parts administrator/standardization job on June 13, 2013. Claimant has suffered from her son and boyfriend suicides within the past seven and two years. She has been under the care of a physician for emotional health issues.

On October 30, 2012 claimant sent an e-mail to employees, management and employer vendors that contained inappropriate statements and references to persons such as quiet mice or rabid rats with words like paranoid, shit and crap. Claimant had an emotional breakdown and left work in an ambulance. She was on medical leave from October 31, 2012 until her return to work on April 12, 2013.

Claimant was given an unrestricted work release when she returned on April 12. The employer issued her a five-day disciplinary suspension for her inappropriate and disruptive October 30 e-mail.

When claimant returned from her suspension on April 19, the employer moved her to a different work area and changed her job duties. It imposed a daily work report sheet to see if she was doing her assigned work.

On May 31, claimant had an emotional outburst because she believed a computer message that her session ended meant she was terminated. Claimant had experienced password re-set issues. On June 11 she left work at 3:00 p.m. to seek medical attention because she was hallucinating. She returned to work with a doctor excuse.

The employer terminated claimant on June 13, 2013 because she was not capable of performing satisfactory work.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The administrative law judge concludes employer failed to establish claimant was discharged for misconduct on June 13, 2013.

The record establishes claimant's history of emotional illness. Her failure to perform satisfactory work is based on her inability to do so that does not constitute job disqualifying misconduct.

Although claimant was given an unrestricted medical release from her doctor on April 12, 2013, the employer was not able to modify her prior job to the point she could perform successful work. In order for claimant to be able and available for work at this time she needs to do some gainful employment not necessarily work as her former employment position. There is no remand to the department on this issue unless the employer contests this conclusion.

**DECISION:**

The department decision dated July 5, 2013, reference 01, is reversed. The claimant was not discharged for misconduct on June 13, 2013. Benefits are allowed, provided claimant is other eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs